

Internal Revenue Service
memorandum

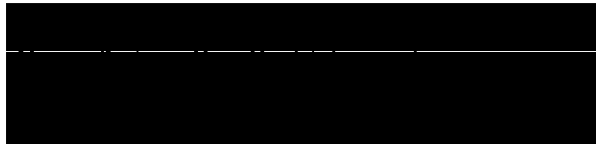
date: JUN 11 1991

to: Director, Internal Revenue Service Center
Kansas City, MO
Attn: Entity Control

from: Technical Assistant
Employee Benefits and Exempt Organizations

subject: CC:EE:3 - TR-45-777-91
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment:

Copy of letter from Railroad Retirement Board

cc: Mr. Gary Kuper
Internal Revenue Service
200 South Hanley
Clayton, MO 63105

08682

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

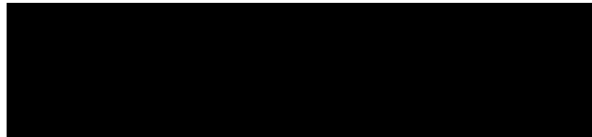
Assistant Chief Counsel
(Employee Benefits and
Exempt Organizations)
Internal Revenue Service
1111 Constitution Avenue., N.W.
Washington, D.C. 20224

MAY 02 1991

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,

A handwritten signature in cursive script, appearing to read "Steven A. Bartholow".

Steven A. Bartholow
Deputy General Counsel

Enclosure

0284B

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

MEMORANDUM

APR 30 1991

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED] - Employer Status

This is in response to your Form G-215 dated February 19, 1991, wherein you requested my opinion as to the status of the [REDACTED] (hereafter [REDACTED] as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

According to a letter dated [REDACTED], from [REDACTED] attorney for [REDACTED], [REDACTED] was formed as a Massachusetts corporation to acquire ownership of a line of approximately [REDACTED] miles of railroad extending between milepost [REDACTED] at the [REDACTED] state line and milepost [REDACTED] located on the [REDACTED] side of [REDACTED] in [REDACTED]. This transaction was approved by the Interstate Commerce Commission. See [REDACTED] with a service date of [REDACTED].

This line of track is operated by [REDACTED] (hereafter [REDACTED]), a Connecticut corporation, an employer under the Railroad Retirement and Railroad Unemployment Acts, as a designated operator. See Form G-215 dated [REDACTED]. According to [REDACTED] letter, both [REDACTED] and [REDACTED] are wholly owned subsidiaries of [REDACTED] (hereafter [REDACTED]), a Delaware Corporation whose sole function is to act as a holding company. [REDACTED] has no employees and performs no services for Railroad. It is merely a company which owns real estate upon which lies a track of railroad operated by someone else.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)) defines the term "employer" in part as follows:

"The term "employer" shall include--

"(i) any express company, sleeping-car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49 [the Interstate Commerce Act];

Director of Research and Employment Accounts

"(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, * * *."

A virtually identical definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351 (a) & (b)).

██████ is not a carrier by railroad, but section 1(a)(1)(ii) of the Act provides for coverage of a company which is not a carrier if the company is owned or controlled by or under common control with a paragraph (i) employer and the company performs a service in connection with railroad transportation.

Section 202.4 of the Board's regulations (20 CFR 202.4) defines "control" as follows:

"A company or person is controlled by one or more carriers, whenever there exists in one or more such carriers the right or power by any means, method or circumstance, irrespective of stock ownership to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies and business of such a company or person."

Section 202.5 of the Board's regulations (20 CFR 202.5) defines "common control" as follows:

"A company or person is under common control with a carrier, whenever the control (as the term is used in § 202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled."

██████ and ██████ are under common control, as both are wholly-owned subsidiaries of ██████. Therefore, if ██████ provides a service in connection with the transportation of passengers or property by railroad it is an employer under the Acts. ██████ and ██████ obtained the permission of the Interstate Commerce Commission to permit ██████ to operate the

Director of Research and Employment Accounts

line of railroad which [REDACTED] owns. See ICC [REDACTED] [REDACTED], with a service date of [REDACTED]. It is not clear whether [REDACTED] has a residual right to operate the line of railroad should [REDACTED] cease to do so. However, in Board Order 89-74 the Board held that a lessor employer, which had sold all its railroad assets so that the lessor no longer had the equipment necessary to resume railroad operations, was no longer an employer under the Acts. See appeal of Board of Trustees of the Galveston Wharves, B.O. 89-74, April 24, 1989.

[REDACTED] has never had any railroad equipment. It has no employees and is not now operating a railroad, nor does it have the capability to do so. As such it is analogous to the Massachusetts Bay Transportation Authority, which was determined in Legal Opinion L-90-160 not to be an employer under the Acts where it had contracted with a covered employer to provide service over its track, but had not itself ever commenced rail operations and did not have the present capability to do so.

As stated, [REDACTED] has no employees and it provides no services to [REDACTED]. It is therefore my opinion that [REDACTED] is not an employer under the Acts.

An appropriate Form G-215 is attached.


Steven A. Bartholow

Attachment